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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 47

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

SUPPLEMENTAL BRIEF OF APPELLEE.

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SUBJECT INDEX

PAGE

Argument 1

Conclusion 7

Appendices:

Appendix A. Response of the Probation Office.....App. p. 1

Appendix B. Communication addressed to the Los Angeles Police Department .....App. p. 6

TABLE OF AUTHORITIES CITED

CASES

Barnett v. Marsili, 131 Cal. App. 337

Gisske v. Sanders, 9 Cal. App. 13

Mullane v. Central Hanover Tr. Co., 339 U. S. 306

Murdock v. Pennsylvania, 319 U. S. 105

O'Gorman v. Hartford Fire Ins. Co., 282 U. S. 251

People v. Flanagan, 65 Cal. App. 268

People v. Martin, 45 Cal. 2d 755

People v. Mendoza, 145 Cal. App. 2d 279

People v. Michael, 45 Cal. 2d 751

People v. West, 144 Cal. App. 2d 214

Purity Extract & T. Co. v. Lynch, 226 U. S. 192

Smiley v. Kansas, 196 U. S. 447

Walker v. Hutchinson City, 352 U. S. 112

Zeh v. Alameda Community Hotel Corp., 122 Cal. App. 366

STATUTES

Los Angeles City Charter, Sec. 31

Los Angeles Municipal Code, Sec. 52.38(f)

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In view of the matters urged and set forth in the Brief of *Amicus Curiae* for Appellant, appellee presents herewith, by way of a reply in part thereto, this supplemental brief.

Argument.

It is inferred that appellant could not have possibly been aware of the provisions of the Los Angeles registration ordinance for the reason that it was published once in the Los Angeles Daily Journal at the time of its enactment (*Amicus Curiae* Br. p. 9). It must be noted that this procedure followed the provisions of the Charter of the City of Los Angeles. Section 31 thereof provides that all ordinances finally adopted under the provisions of the Charter shall be published in the English language by at least one insertion in some daily newspaper printed

and published in the City of Los Angeles. To follow the reasoning advanced by *amicus curiae* it would be necessary to continually publish all ordinances and statutes each day, for each day some person becomes an adult and could not have been charged with notice of the prior passage of such an ordinance even though there had been complete compliance with statutory law in the enactment of such ordinance or statute.

The cases cited by *amicus curiae* in regard to notice by publication do not support the general principle for which they were cited. In *Walker v. Hutchinson City*, 352 U. S. 112, 117, the court held that due process requires that an owner whose property is taken for public use must be given notice and a hearing in determining just compensation; that a newspaper publication alone is not adequate notice under such circumstances. It is further stated therein it is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property.

In the case of *Mullane v. Central Hanover Tr. Co.*, 339 U. S. 306, this court's statement as to notice given by a newspaper publication related to proper notice in regard to beneficiaries whose interests were involved.

Neither of these cases requires or limits the publication of statutes or ordinances enacted by a legislative body to provide personal notice to all citizens of the state or community.

Under California law persons are conclusively presumed to know the law. (*Barnett v. Marsili*, 131 Cal. App. 337; *Zeh v. Alameda Community Hotel Corp.*, 122 Cal. App. 366; *People v. Flanagan*, 65 Cal. App. 268.)

In his brief *amicus curiae* has assumed and stated as a proven and established fact that appellant "had no knowl-

edge that her status as an unregistered 'convicted person' was a crime punishable by imprisonment" and "had no knowledge of her duty to register, etc." (Br. of *Amicus Curiae*, pp. 5, 8, 11 and 19.) Appellee caused an inquiry to be made of the Probation Officer of the County of Los Angeles as to the usual procedure followed in cases where a defendant is placed on probation in connection with the "registration laws." The response of the Probation Office is hereto attached as Appendix A. It is noted that the usual practice of that office is to require persons granted probation to comply with any appropriate registration ordinances or statutes. In fact, that practice was made standard procedure under the Department's Manual of Instructions. It is significant to further note in this particular case that the records disclose Mrs. Lambert was advised to register on October 30, 1951. This appears to have been the first interview with the probationer by the Deputy Probation Officer. It thus appears there is no question that the People could have proved as part of their case in chief or in rebuttal of appellant's denial of knowledge of such registration ordinance, that she in fact was given personal notice of the existence of the ordinance and of her duty to register thereunder. The trial court, however, followed what appeared to be state law and ruled that appellant was not entitled to testify as to her knowledge of her duty to register. That fact, if it be a fact, was not established.

Amicus curiae asserts that appellant's experience indicates it is not the uniform policy of the police to give convicted persons an opportunity to register if they fail to do so because of ignorance of the requirement (*Amicus Curiae* Br. p. 11). Attached and marked Appendix B is a communication addressed to the Los Angeles Police

Department from *amicus curiae* and copy of the reply thereto. It would appear from such reply that the policy of the Police Department is in fact contrary to appellant's experience.

It must be further emphasized that the arguments advanced for and on behalf of "first offenders" should have little concern here for the record discloses that appellant had suffered two prior convictions of felonies and therefore does not come within such classification. Also, appellant had not been charged with failure to register for each separate day nor was she ordered to be imprisoned for a period of six months [R. 20].

Amicus curiae has overlooked the provisions of Subsection (f) of Section 52.38, which provide that where the conviction has been set aside in the manner provided by law, that is generally under the probation laws upon a showing of probationer's having complied with the terms of probation, such person is not thereafter considered to be a "convicted person" and need not register. It is thus apparent that this ordinance does consider rehabilitation and does not require "a person who has been convicted any place in the world at any time since 1921 of any offense punishable in California . . . ." to register (*Amicus Curiae* Br. pp. 21, 23, 35, 41).

Much of the argument advanced is based solely on speculation, such as the assertion that "the fact of registration may subject the convicted person to frequent detention and questioning during police roundups of suspects for crime of which he is completely innocent" (*Amicus Curiae* Br. p. 25). This argument assumes lawless action by police officers and overlooks the clear declaration of the law upon the subject of lawful arrest. It has been held that it is not unreasonable for officers to seek interviews

with suspects or witnesses, or to call on them at their homes for such purpose.

People v. Martin, 45 Cal. 2d 755;

People v. Michael, 45 Cal. 2d 751;

People v. Mendoza, 145 Cal. App. 2d 270.

A police officer has a right to make inquiry in a proper manner of anyone upon the public streets at a late hour as to his identification and the occasion of his presence, if the surroundings are such as to indicate to a reasonable man that the public safety demands such identification.

Gisske v. Sanders, 9 Cal. App. 13, 16.

It has been held that there is nothing unreasonable in an officer questioning persons outdoors at night, and when a response to a reasonable inquiry elicited evidence that the person may have been guilty of a crime, the arrest was lawful.

People v. West, 144 Cal. App. 2d 214.

In the case at bar, the inference attempted to be made concerning an illegal arrest was first offered after the trial had been completed and the verdict of the jury returned. It was made in connection with a motion in arrest of judgment [R. 19].

Amicus curiae also asserts that "Under the terms of section 52.42(b), a police officer apparently is free to disclose the registration data if he does so 'in the regular course of his duties.'" (*Amius Curiae* Br. p. 23.) That reference should have been to subsection (d). It is certainly implied that the "regular course of his duties" therein referred to applies to his duties as a police officer and relates to the detection and apprehension of those committing crime.

Another field of speculation appears on page 23 of *Amicus Curiae's* Brief, wherein reference is made to possible leaks or careless disclosure of the information required. This overlooks the confidential character placed upon these records and assumes that those provisions will not be obeyed. The answer to question No. 5, Appendix B, further dispels the likelihood of such event occurring.

The argument advanced and the information contained in the replies from the various countries made by *amicus curiae* are admittedly based upon the common law. Registration statutes are of course purely statutory law and of more recent origin. That may explain the absence of such ordinances in cities having common law jurisdiction. In years gone by when communities were small and the population thereof remained the same, the police were well aware of the presence of persons within their community who were potentially criminally inclined, or who suffered prior conviction, but that situation no longer exists. With the great influx of persons to the larger cities and the rapid means of transportation, it is not now possible to be aware of the presence of all persons deemed to be a potential threat to the community. The figures mentioned in the Brief of *Amicus Curiae* give support to the fact that the legislative body of the City of Los Angeles had a reasonable basis for enacting this ordinance in an effort to add a needed protection to the health, morals, welfare and safety of the public, and that such legislation would be corrective of some specific evil.

It has been stated by this Court that the discretion of the legislature is very large in the exercise of the police power, both in determining what the interests of the public require and what measures and means are reasonably necessary for the protection of such interests; that the constitutionality of such measures is presumed; and

it must also be presumed that the legislature has carefully investigated and determined that the interests of the public require such legislation, and that a state may adopt such measures as is deemed necessary to prevent that which it considers to be evil, and may prohibit acts which are in themselves innocuous in order to effectuate the prohibition of that which is evil.

O'Gorman v. Hartford Fire Ins. Co., 282 U. S. 251;

Purity Extract & T. Co. v. Lynch, 226 U. S. 192.

A law may include a prohibition of innocent acts, and it is not invalid as to matters included therein which are within the police power. Such innocent acts may be prohibited by statutes enacted under the police power when necessary to protect the public peace, safety and welfare.

Smiley v. Kansas, 196 U. S. 447.

In the case of *Murdock v. Pennsylvania*, 319 U. S. 105, this court implied that a registration ordinance could be a proper police regulation. It was there stated: "As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community."

Conclusion.

The judgment of the court below should be affirmed.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,
DONALD M. REDWINE,
Assistant City Attorney,
By PHILIP E. GRAY,
Deputy City Attorney,
Attorneys for Appellee.

APPENDIX A.

COUNTY OF LOS ANGELES
PROBATION OFFICE
Post Office Box 3544 Terminal Annex
Los Angeles 54, California

September 10, 1957

Re: Virginia Lambert—X-51902
Superior Court Nos. 142123, 142412

Mr. Philip E. Grey
Deputy City Attorney
Room 40, City Hall
Los Angeles-12 California.

Dear Mr. Grey:

In response to your request for information regarding Virginia Lambert, we submit the following:

Mrs. Lambert was first known to the Probation Department in August, 1951. She had entered a plea of guilty to one count of forgery of a fictitious name in each of the two Superior Court informations No. 142123 and 142412.

On August 17, 1951 she was sentenced by the Hon. Thomas L. Ambrose, Judge, to the California Institution for Women at Tehachapi on each of the cases, the second sentence to run concurrently. The execution of the sentence was suspended: she was placed on probation for a period of five years on condition that she serve the first 90 days in the custody of the Sheriff; that on her release she secure and maintain suitable employment to the best of her ability; that she maintain residence as approved by the Probation Officer; that she have no further transactions with checks or a checking account or bank checks of any character; that she follow recommendations as might be given by the Probation Officer.

On April 8, 1952 Mrs. Lambert was before the Court for hearing on violation of probation. The matter was continued from time to time and on June 10, 1952 probation as to each case was modified to spend the next six months in the custody of the Sheriff; "that at the expiration of that time she will be subject to allowance for good time, that probation will then be terminated and the case be permitted to expire without dismissal." The six months in the second case was ordered to run concurrently with the six months of the first case.

About February 10, 1955 motion was filed that the plea of guilty in both cases be set aside and the matters dismissed pursuant to Section 1203.4 P.C. This matter was first heard on February 15, 1955, was continued to March 1, 1955 and on that date the Court granted the defendant's motion to set aside the guilty plea and dismissed the two informations.

A review of our records shows that on October 30, 1951 the defendant was given written instructions which embodied the conditions of probation as imposed by the Court on August 17, 1951, and also the usual instructions to probationers. We are enclosing a photocopy of the instructions as given to Mrs. Lambert and as signed by her.

Our records further show the following notation dated October 30, 1951: "Advised to register." In accordance with our practice that indicates that Mrs. Lambert was advised by the Deputy Probation Officer to register with the Los Angeles Police Department in accordance with the City's Registration Ordinance.

For a good many years it has been the practice of the Probation Department to require that persons granted probation comply with any appropriate registration ordinances whether that be registration under Section 290

P.C. since that has been effective; registration under County ordinance or registration under the requirements of Section 52.38 of the Los Angeles Municipal Code. This procedure, which had been in effect for some time at the time Mrs. Lambert was placed on probation in August, 1951, was formalized under the Department's Manual Instructions issued April 1, 1953 and April 10, 1953.

In view of the fact that Mrs. Lambert had been convicted of forgery of a fictitious name, a felony, and was at that time residing in Los Angeles City, the implied reference in the notation of our supervising deputy "Advised to register" was to the requirements of the Los Angeles Municipal Code.

Yours very truly,

HAROLD R. MUNTZ

Harold R. Muntz,

Chief Deputy Probation Officer

ECG ibm

The original communication received from the Probation Department has been filed with the Clerk of this Court.

COUNTY OF LOS ANGELES

PROBATION OFFICE

Los Angeles 12, California

INSTRUCTIONS TO ADULT PROBATIONER

File No. X-51902

Virginia Lambert: On 8-17-51 you were granted probation for a period of five years by the Honorable Thomas L. Ambrose, Judge of the Superior Court, the order of the court being as follows:

California Institution for Women concurrently both cases. Suspended.

Probation for five years.

90 Days County Jail, Good Time.

Secure and maintain suitable employment.

Residence approved by Probation Officer.

No checks or checking account.

Comply orders of the Court and Probation Officer.

ONLY THE COURT HAS THE AUTHORITY TO CHANGE THE ABOVE ORDER.

In addition to the above, you are instructed by the probation officer as follows:

1. To notify the probation officer at once by mail or in person after changing your address.
2. To remain in Los Angeles County unless permitted by the court or probation officer, or ordered by the court, to go elsewhere. Requests to leave the State should be made two months in advance, or at the earliest possible time (See reverse side.)
3. To report to the probation officer in person during the first 10 days of each month (but not on Saturdays,

Sundays or holidays), between the hours of 8:00 a.m. and 4:30 p.m.. However,

If permitted to reside outside Los Angeles County, or ordered by the court to do so, you must report to the probation officer by mail. Reports must be posted by the 5th of each month.

4. To obey all laws.
5. Other directions:

FAILURE TO REPORT IS A VIOLATION OF THE TERMS OF YOUR PROBATION.

You may be returned to the court, or your probation may be revoked in your absence, if the court "shall have reason to believe from the report of the probation officer, or otherwise, that the person so placed on probation is violating any of the conditions of his probation, or engaging in criminal practices, or has become abandoned to improper associates or a vicious life," (1203.2 Penal Code); or if you are convicted of any new offense.

by MARGARET GIBSON
Deputy Probation Officer, Adult Div.

I hereby acknowledge receipt of
a copy of these instructions.

10-30, 1951

VIRGINIA LAMBERT
Probationer.

APPENDIX B.

LAW OFFICES OF
O'MELVENY & MYERS
433 South Spring Street
Los Angeles 13

July
22nd
1957

In Reply Refer to 8608

Captain Stanley Sheldon
Public Information Division
City of Los Angeles
150 North Los Angeles Street
Los Angeles, California

Dear Captain Sheldon:

On July 12th your office was kind enough to send me information concerning the administration of Section 52.38 of the Los Angeles Municipal Code, which requires registration of previously convicted persons. That information indicates that during the year 1956 thirty-nine arrests were made for violation of the ordinance.

I am writing now to enquire whether it would be possible for you to make available to me the names of the persons who were arrested. The purpose of this request is to enable me to examine the proceedings in some or all of these cases. As I mentioned to you on the telephone, my interest in this problem stems from the fact that the Supreme Court invited me to file a brief as a friend of the Court in a case (Lambert v. California) which involves this ordinance.

Your cooperation in connection with my enquiries is very much appreciated.

Sincerely yours,
WARREN M. CHRISTOPHER
Warren M. Christopher.

WMC:kg

The original letter has been filed with the Clerk of this Court.

Number of felons currently registered under ordinance section 52.38.

Answer: 43,313 as of July 10, 1957.

Number of filings on this charge.

Answer: 39 arrests during 1956. In 36 of these, complaints were issued by City Attorney.

Number of convictions on this charge.

Answer: Of the 36 complaints filed, there were 32 convictions. 11 received jail sentences of from 5 to 30 days each. Six of these received fines in addition to jail sentence of $25 to $50 each. 21 received straight probation.

What methods are used to acquaint ex-convicts with the provisions of these ordinances requiring them to register?

Answer: Prior to the time that convicts are released from the state prisons, they are enrolled in a pre-release program which is conducted by the State Department of Corrections. They receive detailed instructions concerning the conditions of their parole and general information regarding their rights, etc. It is during this pre-release schooling that they are advised of the local ordinances pertaining to the registration of ex-felons.

All parolees are required to report to a state Parole Officer immediately upon their arrival at their respective destinations. The parolee is again advised of the necessity for registering as an ex-convict with the local police department in those jurisdictions having a registration ordinance.

w is the information filed in this Department?

swer: Ex-convict registration forms and photos are retained in packages which bear an L. A. Police Department number. The L. A. No. on the package is a permanent number assigned to an individual. This package contains copies of all previous arrest reports, commitments, etc., pertaining to the individual subject.

In addition to the package file a 3x5 Index Card bearing the ex-convict's name and LAPD registration number is kept in a separate index file. The purpose of this file is for cross reference.

Information concerning ex-convict registrations is rigidly controlled and is restricted to use by bona fide law enforcement agencies.

t now or has it ever been the policy to permit felons register, and then release them when there is no er charge upon which to hold them?

swer to 6: Ex-convicts who have failed to register as such are rarely booked on that charge alone. The policy is to allow the subject to register and then release him, except in those cases where a subject is uncooperative and/or is frequenting high crime areas of the city.

During 1956, arrest bookings totaled 225,592, of which but 39 arrests were for violation of the ex-convict registration ordinance.

There is no record of the number of instances where ex-convicts have been

questioned by officers making field interrogations, taken to the Record Division for registering, and later released. Based upon the personal experience of the officers questioned, there have been many times more cases of this type than of actual bookings on this charge.

ADULT ARRESTS—YEAR 1956

CONVICT REGISTRATION ARRESTS ONLY

Name	Date of Arrest
Muto, David	10-23-56
Knight, I.	11-5-56
Duran, M.	9-11-56
Talley, C.	11-21-56
Moore, R.	1-29-56
Briscoe, T.	5-4-56
Kuykendall, H.	11-14-56
Murray, R.	12-8-56
Williams, J.	4-10-56
Soriano, R.	6-23-56
Minnix, R.	7-1-56
Haynes, J.	12-9-56
French, R.	7-1-56
Seals, W.	10-9-56
Bernard, R.	5-26-56
Sides, O.	2-28-56
Belkin, B.	5-7-56
Bluett, L.	1-27-56
Ethridge, A.	3-31-56
Dufalo, L.	2-16-56
Adams, G.	9-29-56
Pines, H.	12-14-56

Name	Date of Arrest
Nieman, H.	11-5-56
Walters, C.	11-28-56
Klein, H.	3-14-56
Sherling, H.	5-22-56
Matthews, Edw.	11-24-56
Washington	3-3-56
Enstrom, H.	6-6-56
Takahashi, A.	1-1-56
Valney, R.	2-7-56
Sanchez, F.	5-26-56
Barkmeier, M.	9-25-56
Parks, T.	12-17-56
Wilson, J.	5-25-56
Crosby, D.	10-6-56
Woodleaf, G.	12-26-56
Summers, W.	6-20-56
Shelton, J.	5-8-56